

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN
COMPLIANCE ORDER NUMBER 237

September 17, 2015

STEARNS, D.J.

This is the two hundred and thirty-seventh Compliance Order that has issued over the course of this litigation. On September 15, 2015, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States and the Conservation Law Foundation have each declined to file a response.

I. Schedule Seven

There were no activities on the court's Schedule Seven during the past quarter.

A. Progress Reported

1. Combined Sewer Overflow Program

a. Control Gate and Floatables Control at Outfall MWROO3 and Rindge Avenue Siphon Relief

This construction contract, which is part of the master plan to improve the hydraulic performance of the Alewife Brook interceptor system, is now 95 percent complete. Full completion will be achieved by October 28, 2015, as stipulated by Schedule Seven. The MWRA reports that two of the three project components – the siphon and the floatables control – are now operational. The third component, the automated weir gate, is installed and will shortly come on line.

b. CAM004 Sewer Separation

The City of Cambridge continues to make progress on Contracts 8A, 8B, 9, and Concord Lane, the four major components of the CAM004 sewer separation project. The complexities of the project have led the City and the MWRA to ramp up efforts (at significant additional cost) to keep the project on track for completion by the December 2015 milestone. As the MWRA notes, the work is taking place across a 211-acre site that encompasses some of the most populated areas of Cambridge. The complexities of construction

aside, the project has encountered a number of unforeseen site complications and delays stemming from the relocation of private utility connections.

In responding to the delays, the City has brought additional managerial and engineering resources to bear, and has negotiated with its contactors to defer non-CSO control work beyond the December 2015 milestone to permit focus on the critical CSO components. The overall cost of the CAM004 project has increased from an estimated \$97.7 million cost-to-completion in November of 2013 to a currently projected \$122.4 million. The MWRA Board of Directors is being asked to increase the Authority's contribution to the project by an additional \$5.3 million to a total of \$98.7 million, a request that is expected to be approved.

At present, the \$17.8 million Contract 8A, which involves the separation of combined sewers in the 68-acre area east of Fresh Pond Parkway, is in the final stages of surface restoration and beautification work. The \$31.2 million Contract 8B, which involves the separation of combined sewers in an 83-acre site between Concord Avenue and Brattle Street, will likely fall short of the September 18, 2015 CSO work completion date, but the City gives assurances that the contractor will meet the critical path date of October 30, 2015. Legitimate concerns remain, however, that the delay in

completion of Contract 8B may impact related sewer and drain work in the Contract 9 area.

On a more optimistic note, the MWRA reports that the \$24.4 million Contract 9, which provides for sewer separation in the 60-acre area extending from Fresh Pond Parkway to the intersection of Concord and Huron Avenues, is now 95 percent complete (up from 73 percent at the end of the last quarter). Water mains have been installed on Chilton, Alpine, Field, Garden, and Birch Streets, and on Bay State Road, while storm drains and sewers have been installed on Alpine, Fern, Garden, and Birch Streets, and also on Bay State Road. The City of Cambridge hopes to complete the CSO work on Contract 9 by the end of December of 2015, in compliance with Schedule Seven.

c. Concord Lane

With access issues having been successfully resolved with the private abutter, the CSO work on the \$3.4 million Concord Lane project is 40 percent complete. The contractor expects to finish the installation of storm drains and sewers on Concord Lane by the end of October of 2015.

d. Reserved Channel Sewer Separation

The Boston Water and Sewer Commission (BWSC) has now completed six of the nine contracts that comprise the overall project – the \$3.9 million

Contract 1, the \$5.9 million Contract 2, the \$1.3 million Contract 7, the \$11.8 million Contract 3A, the \$13.6 million Contract 3B, and the \$13.8 million Contract 4.¹

In April of 2015, as previously reported, the BWSC resumed work on the \$6.8 million Contract 8 and plans to compete the repaving of East Fourth and M Streets in September and October of 2015. The \$211,000 Contract 6 (disconnecting roof drain downspouts) is essentially complete. The \$4.8 million Contract 5 (pipe cleaning and sewer relining in the Reserved Channel area) remains on target for substantial completion in November of 2015.

e. Mystic River Watershed

The MWRA reports that the Environmental Protection Agency (EPA) unveiled a new scorecard for the Mystic River and its tributaries on July 13, 2015. The new scorecard reports grades for each of the fourteen components of the Mystic River system (rather than just a single grade for the watershed as a whole). The EPA finds that water quality (measured by bacteria levels deemed safe for boating and swimming) was satisfactory nearly all of the time in the Mystic River itself, but generally poor in the tributary streams, particularly Winn's Brook, Little River, Mill Brook, Malden River, Island End

¹ The court notes increases over the prior quarter in the costs-to-completion of Contracts 7, 3B, and 4, and a small decrease in the cost of Contract 1, for a net increase of \$3.1 million.

River, and Mill Creek. The main culprits appear to be illicit sewer connections and uncontrolled stormwater runoff. The MWRA has welcomed the more comprehensive grading system, which in the words of Executive Director Laskey, provides a “helpful tool” and a “roadmap” for future remediation planning.

II. Comments

While the court is pleased with the continued progress, it is concerned that delays in completing work in the City of Cambridge, particularly on Contracts 8B and 9, may put the MWRA out of compliance with Schedule 7. To gain a better understanding of the challenges and prospects for timely completion, the court requests that Director Laskey arrange for the court to be briefed by the responsible managers and City officials on their plans to comply with the court’s deadlines during an on-site inspection to take place, preferably, before October 23, 2015.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE